

No. 23-15838

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

TAMARA WAREKA p/k/a TAMARA WILLIAMS,
Appellant,
v.

TRUSPER INC.,
Appellee.

On Appeal from the United States District Court
for the Northern District of California
Hon. Vince Chhabria
No. 3:21-cv-02682-VC

MOTION TO DISMISS THE APPEAL WITHOUT PREJUDICE

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MOTION TO DISMISS WITHOUT PREJUDICE

Pursuant to Federal Rules of Appellate Procedure 42(b)(2) Appellant Tamara Wareka p/k/a Tamara Williams (“Appellant”) hereby moves to dismiss this appeal without prejudice, each side to bear its own costs and fees.

On February 8, 2023, the District Court entered summary judgment in favor of Appellee Trusper Inc. (“Appellee”) stating that the only remaining matter to be decided was the amount of “compensatory damages [for breach of contract] in the form of reasonable attorney’s fees” to be awarded to Appellee. Because compensatory damages in the form of attorney’s fees was the only remaining issue to be decided, Appellant believed that the District Court’s summary judgment order functioned as a “final decision” for purposes of filing an appeal. *See Lobatz v. U.S. W. Cellular of Cal., Inc.*, 222 F.3d 1142, 1145 (9th Cir. 2000) (“The Supreme Court has adopted a ‘bright-line rule . . . that a decision on the merits is a ‘final decision’ for purposes of [filing an appeal] whether or not there remains for adjudication a request for attorney’s fees attributable to the case.”).

Because the District Court did not enter a judgment as a separate document on the docket, the “judgment” would not be entered until 150 days after the issuance of District Court’s summary judgment order. Federal Rules of Civil Procedure 58(c)(2)(B). Appellant filed a Notice of Appeal on June 1, 2023, before the 150-day period has elapsed, rendering it timely filed. *See* Federal Rules of Appellate Procedure 4(a)(2).

On June 9, 2023, the parties agreed to a proposed final judgment to be entered by the District Court which would dispose of all remaining issues, including compensatory damages in the form of attorney’s fees. However, as a result of the Notice of Appeal having previously been filed, the parties questioned whether or not the District Court was divested of jurisdiction to enter such judgment. As such, the parties have agreed that the instant appeal should be dismissed without prejudice,

each party to bear its own costs and fees, to ensure that full jurisdiction is returned to the District Court to enter the final judgment agreed upon by the parties. After the District Court has entered the final judgment, the parties have agreed that Appellant may then file a new notice of appeal within the prescribed time frame in order to pursue appellate relief.

In conclusion, Appellant Tamara Wareka p/k/a Tamara Williams respectfully requests that the instant appeal be dismissed without prejudice, each party to bear its own fees and costs so that she may re-file for appellate relief upon entry of final judgment in the District Court.

Dated: June 15, 2023

Respectfully submitted,

/s/ Ryan E. Carreon
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CERTIFICATE OF SERVICE

I hereby certify that on June 15, 2023, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

Dated: June 15, 2023

Respectfully submitted,

/s/ Ryan E. Carreon
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